

he  
a-  
er  
ss  
se  
n-

e-  
ig  
re  
s,  
re  
se  
at

FILE COPY

JAN 10 1927

JURY  
CLERK

IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1926.

ST. LOUIS AND SAN FRANCISCO RAIL-  
ROAD COMPANY and ST. LOUIS-SAN  
FRANCISCO RAILWAY COMPANY,

Petitioners,

vs.

E. B. SPILLER et al.,

Respondents.

No. 577.

**MOTION OF RESPONDENTS TO ADVANCE  
ABOVE CAUSE ON DOCKET.**

S. H. COWAN,  
DAVID A. MURPHY,  
JOHN S. LEAHY,  
WALTER H. SAUNDERS,  
Attorneys for Respondents.



IN THE  
**SUPREME COURT OF THE UNITED STATES.**

---

OCTOBER TERM, 1926.

---

ST. LOUIS AND SAN FRANCISCO RAIL-  
ROAD COMPANY and ST. LOUIS-SAN  
FRANCISCO RAILWAY COMPANY,  
Petitioners, }  
vs.  
E. B. SPILLER et al.,  
Respondents. } No. 577.

---

**MOTION OF RESPONDENTS TO ADVANCE  
ABOVE CAUSE ON DOCKET.**

---

To the Honorable, the Supreme Court of the United States:

E. B. Spiller et al., respondents in the above-entitled cause, respectfully move this Honorable Court to advance said cause on the docket for argument on the following grounds:

**BRIEF STATEMENT OF FACTS.**

This case involves the right of certain cattle shippers to receive preferential payment under a reparation judgment,

rendered by this Court, affirming the award of the Commission, in the case of Spiller et al. v. Atchison, Topeka & Santa Fe Railway Company, 253 U. S. 117, against nine carriers, eight of whom, presumably, have paid the judgment of this Court. During the pendency of these proceedings before the Commission for an award of reparation, which originated in an advance by certain carriers of cattle rates, in the year 1903, to the extent of 3 cents a hundred from Southwestern points to various markets, the St. Louis & San Francisco Railroad Company, one of the carriers, went into the hands of Receivers, on May 27, 1913, under consent proceedings (Rec., p. 11). This railroad company, its Receivers and its successor, have, at all times, contested the right of the shippers (respondents herein) to obtain reparation for these excess charges. The history of this litigation is well set out in the opinion of the United States Circuit Court of Appeals in this case (Rec., pp. 699 to 704), and shows that, from 1905 to date, respondents have been diligently endeavoring to recover from these petitioners the excess charges, paid by them, and condemned by the Commission in its reparation orders and by this Court in its judgment, *supra*.

This Court, in the Spiller case, *supra*, 253 U. S. 117, l. e. 120-121, and l. e. 124-125 and 126, 127-128 and 129, also gave the history of this litigation and points out that the respondents in this case have been litigating this matter, beginning in February, 1904, with a petition filed before the Interstate Commerce Commission under Section 13 of

the Commerce Act, challenging the advanced rates as unjust and unreasonable under the Commerce Act and seeking relief to the extent of said advance of 3 cents a hundred pounds.

The grounds of this motion are:

First. That under rule 18 of this court, paragraph 5: "Cases once adjudicated by this court upon their merits and again brought up may be advanced by leave of the Court."

Second. The matters, involved herein, arose under the Commerce Act of the United States and under the theory of the Expedition Act, cases so arising, should be advanced.

Third. This matter has been continuously in litigation since February, 1904, before the Interstate Commerce Commission, the Federal District Courts, the United States Circuit Court of Appeals of the Eighth Circuit and this Court; and these considerations constitute the special cause for advancement under said rule 18, paragraph 7.

Wherefore, respondents pray that said cause may be advanced on the docket for argument.

S. H. COWAN,  
DAVID A. MURPHY,  
JOHN S. LEAHY,  
WALTER H. SAUNDERS,  
Attorneys for Respondents.